CCRB INVESTIGATIVE RECOMMENDATION

| Investigator: | | Team: | CCRB Case #: | ☐ Force | ☑ Discourt. | U.S. |
|------------------------------|-----------|---|-----------------------|------------|-------------------|------------|
| Rebecca Ho | | Squad #6 | 201602798 | ☑ Abuse | O.L. | ☐ Injury |
| Incident Date(s) | | Location of Incident: | | Precinct: | 18 Mo. SOL | EO SOL |
| Saturday, 04/02/2016 5:31 PM | | § 87(2)(b) | | 43 | 10/2/2017 | 10/2/2017 |
| Date/Time CV Reported | | CV Reported At: | How CV Reported: | Date/Time | e Received at CCI | RB |
| Sat, 04/02/2016 10:23 PM | | CCRB | On-line website | Sat, 04/02 | /2016 10:23 PM | |
| Complainant/Victim | Type | Home Addre | ess | | | |
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| Witness(es) | | Home Addre | ess | | | _ |
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| Subject Officer(s) | Shield | TaxID | Command | | | |
| 1. DT3 Daniel Mahoney | 06505 | 943509 | NARCBBX | | | |
| 2. LT Michael Dunn | 00000 | 920239 | NARCBBX | | | |
| 3. DT3 Edwin Martinez | 01177 | 940433 | NARCBBX | | | |
| 4. POM Matthew Kuhl | 08652 | 950709 | NARCBBX | | | |
| 5. DT3 Jerry Wolvers | 508 | 943966 | NARCBBX | | | |
| Witness Officer(s) | Shield N | o Tax No | Cmd Name | | | |
| 1. SGT Brian Query | 05001 | 937315 | NARCBBX | | | |
| 2. DT3 Ferdi Memedoski | 6508 | 942190 | NARCBBX | | | |
| 3. LT Charles Hyland | 00000 | 915928 | NARCBBX | | | |
| 4. DT3 Homer Henriquez | 29097 | 949097 | NARCBBX | | | |
| 5. DT3 Elias Robinson | 29409 | 947409 | NARCBBX | | | |
| Officer(s) | Allegatio | on | | Inve | estigator Recon | nmendation |
| A.LT Michael Dunn | Abuse: L | ieutenant Michael Dunr | n detained § 87(2)(b) | | | |
| | | | and § 87(2)(| b) | | |
| P DT2 Daniel Mahanan | Diggovert | osy Datactive Daniel M | ahanay analsa | | | |
| B.DT3 Daniel Mahoney | | esy: Detective Daniel M ously to ^{§ 87(2)(b)} | anoney spoke | | | |
| | aı | nd § 87(2)(b) | | | | |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|------------------------------------|
| C.POM Matthew Kuhl | Abuse: Police Officer Matthew Kuhl searched [8] in the Bronx. | |
| D.LT Michael Dunn | Abuse: Lieutenant Michael Dunn stopped an individual. | |
| E.POM Matthew Kuhl | Abuse: Police Officer Matthew Kuhl searched §87(2)(b) | |
| F.LT Michael Dunn | Abuse: Lieutenant Michael Dunn searched § 87(2)(b) in the Bronx. | |
| G.DT3 Daniel Mahoney | Abuse: Detective Daniel Mahoney threatened to close s business. | |
| H.DT3 Daniel Mahoney | Abuse: Detective Daniel Mahoney searched § 87(2)(b) | |
| I.DT3 Daniel Mahoney | Abuse: Detective Daniel Mahoney searched in the Bronx. | |
| J.DT3 Jerry Wolvers | Abuse: Detective Jerry Wolvers searched § 87(2)(b) in the Bronx. | |
| K.DT3 Jerry Wolvers | Abuse: Detective Jerry Wolvers searched §87(2)(b) | |
| L.DT3 Daniel Mahoney | Abuse: Detective Daniel Mahoney searched § 87(2)(b) | |
| M.DT3 Daniel Mahoney | Abuse: Detective Daniel Mahoney searched §87(2)(b) | |
| § 87(4-b), § 87(2)(g) | | |
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Case Summary

On April 2, 2016, §87(2)(b) filed this complaint with the CCRB via the on-line website [BR 28]. On April 2, 2016, at 5:31 p.m., Lt. Michael Dunn supervised the entry of Bronx Narcotics officers [tactical plan NYPD 06; buy report follow-up NYPD 03] into §87(2)(6) to arrest § 87(2)(b) for selling narcotics § 87(2)(b), § 87(2)(e), § 87(2)(f) Lt. Dunn intended to initiate a business inspection of the barbershop and detained the barbers (Allegation A). Det. Mahoney used the word "fuck" in numerous contexts as he moved the barbers to the rear of the store (Allegation B). Meanwhile, PO Matthew Kuhl began searching the workstations \$87(2)(b) had been standing at (Allegation C). A father was in the store with his children at the time, and the children were led out of the store. Before the father was allowed outside, Lt. Dunn had him provide his identification (Allegation D). Then, the father was allowed to wait outside with his children while officers continued their investigation inside the barbershop. While searching the workstation, PO Kuhl searched § 87(2)(b) s belongings (Allegation E). Lt. Dunn assisted and searched the workstations (Allegation F). §87(2)(6) asked the officers if they had a search warrant to be searching his shop and Det. Mahoney threatened to close the barbershop (Allegation G). Det. Mahoney took §87(2)(b) s cellphone away from him. Det. Mahoney began to search the barbers sitting on the bench, beginning with \$87(2)(b) (Allegation H). Det. Mahoney paused his search, then he and Det. Wolvers began to search the workstation (Allegations I and J). While searching the workstation, Det. Wolvers searched § 87(2)(b) s belongings (Allegation K). Det. Mahoney proceeded to search § 87(2)(b) (Allegations L and M). When Det. Mahoney told each barber to stand up to search them, he used the word "fuck" in numerous contexts towards them (Allegation B continued). Before Det. Mahoney could search additional barbers, Lt. Charles Hyland entered the barbershop and ordered all the officers to leave the store. §87(4-b) §87(2)(9) and § 87(2)(b) were charged with the § 87(2)(b) [arrest reports NYPD 05; criminal court complaints NYPD 11]. Surveillance footage from § 87(2)(b) captured the full incident on video; there is no accompanying audio.

Video Evidence



201602798 - Camera 1 part a.mp4

Snag it of Camera 1 (Part A) – hand-to-hand transaction at 5:11:18 p.m. and 5:11:28 p.m. BR 17, IA 94



201602798 - Camera 1.mp4

Snag it of Camera 1 (Part B) BR 02, IA 21 Transcript, BR 7



201602798 - Camera 2.mp4

Snag it of Camera 2 BR 03, IA 22 Transcript, BR 7



201602798 - Camera 3.mp4

Snag it of Camera 3 BR 04, IA 23 Transcript, BR 7



Snag it of Camera 8 BR 05, IA 24 Transcript, BR 7

Mediation, Civil and Criminal Conviction Histories

| • | Mediation was presented to and rejected by \$87(2)(b) as \$87(2)(b) |
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| • | On June 8, 2016, a request to determine if a Notice of Claim was filed was submitted |
| | confirmation from the Office of the Comptroller will be forwarded upon receipt. |
| • | [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] |
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| | Cirilian and Officer CODD Historian |
| | Civilian and Officer CCRB Histories |
| • | This is the first CCRB complaint filed by § 87(2)(b) [BR 33]. |
| • | § 87(2)(b) |
| | and §87(2)(b) have never filed a complaint with the |
| | CCRB [BR 33]. |

- Lt. Michael Dunn has been a member of the service for 18 years and there are no substantiated CCRB allegations against him.
 - Of the 8 CCRB allegations against Lt. Dunn, 5 are physical force, 1 is a vehicle stop, 1 is a discourtesy, and another is a threat of force.
- Det. Jerry Wolvers has been a member of the service for 9 years and there are 2 substantiated CCRB allegations against him:
 - Of the 7 CCRB allegations against Det. Wolvers, 2 are physical force, 1 is a question, 1 is an entry and/or searched, 1 is a search, 1 is a discourtesy, and another is a question.
 - In case 201102471, a discourtesy allegation was substantiated, chargers were recommended, and a penalty of instructions was imposed.
 - In case 201102471, a question allegation was substantiated, charges were recommended, the NYPD deposed instructions, and a penalty has not been imposed.
- PO Matthew Kuhl has been a member of the service for 4 years and there are no substantiated CCRB allegations against him.
 - Of the 4 CCRB allegations against PO Kuhl, 2 are physical force, 1 is a stop, and another is a frisk.
- Det. Daniel Mahoney has been a member of the service for 9 years and there are 2 substantiated CCRB allegations against him.
 - Of the 17 CCRB allegations against Det. Mahoney, 2 are the threat of force, 3 are discourtesies, 7 are physical force, 1 is a search, 1 is a stop, 1 is offensive language, and 2 are other misconduct.
 - In case 200910763, discourtesy and threat of force allegations were substantiated; charges were recommended and the NYPD determined no disciplinary action would be taken.

• Det. Edwin Martinez has been a member of the service for 10 years and this is the first CCRB allegation against him.

Potential Issues

• The investigation was unable to determine the identity of the male customer with three children. Furthermore, there is no police documentation of personal information for the male.

Finding and Recommendations

Explanation of Subject Officer Identification

• Allegation A: Not only was Lt. Dunn the highest ranking officer present in the barbershop, but according to his statement, Lt. Dunn actively participated in detaining the barbers [BR 18]. §87(2)(9)

Allegations Not Pleaded

• **Entry**: An entry allegation is not pleaded against officers as they stayed within the public areas of the barbershop.

| • | § 87(2)(g) | |
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Recommendations

| • Allegation A: Abuse of Authority – Lt. Michael Dunn detained \$87(2)(b) |
|--|
| and |
| § 87(2)(b) |
| • Allegation D: Abuse of Authority – Lt. Michael Dunn stopped §87(2)(b) |
| Civilian testimonies provided by §87(2)(b) [BR 09], §87(2)(b) [BR 10], §87(2)(b) |
| 09], § 87(2)(b) [BR 11], § 87(2)(b) [BR 13], § 87(2)(b) [BR 12], and § 87(2)(b) |
| 14] were generally consistent in that officers briefly detained \$87(2)(b) |
| and \$87(2)(b) at the rear of the |
| barbershop. In addition, they alleged Lt. Dunn obtained a male's identification before the male was permitted to step outside the barbershop with his children. |
| On April 2, 2016, at 6:00 p.m. § 87(2)(b), § 87(2)(e), § 87(2)(f) |
| |
| description of 887(2)(b) as a Hispanic male in his late 30s, is 5'5" tall, short hair, and wearing an aired vest, black t-shirt, and blue jeans. |
| Lt. Dunn admitted because this was the first time his module was combined with Lt. Hyland's module to work together, he did not know if the barbershop was considered a hotspot area for crime [BR 18]. §87(2)(9). §87(2)(f) |
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| When Lt. Dunn entered the barbershop, he immediately approached |
| who fit the description provided, and §87(2)(b) was placed in handcuffs. Lt. Dunn |
| asked §87(2)(b) asked if he was an employee but §87(2)(b) did not respond. When Lt. Dunn |
| noticed that the workstation did not have any barber licenses displayed, he asked everyone whose |
| work station it was. Lt. Dunn did not know if there was a language barrier with \$87(2)(b) and |

others civilians in the store. When no one responded, Lt. Dunn explained he needed to investigate further as he could not walk away from a possibly 'problematic area' with 'half the materials' he needed in his investigation, which carried the risk of having to go back at a later date to complete the investigation. Lt. Dunn explained that when a crime has occurred within a licensed premise, the employees are required to stay. Lt. Dunn also stated he could not come back at a later date to inspect the barbershop and expect the same employees to be working there, which is why he wanted to promptly complete his investigation. In addition, Lt. Dunn did not know who else may have been involved § 87(2)(e), § 87(2)(f) and he needed to investigate that further as well. Lt. Dunn believed his questions made the barbers 'hostile,' so he ordered them to stand at the back of the store. Once §87(2)(b) and §87(2)(b) moved to the rear, Lt. Dunn walked to the front of the store, where an unidentified male stood with his young children. At first, Lt. Dunn did not know if the male was an employee who did not comply with his orders, the children's father, or if he was possibly involved in §87(2)(e), §87(2)(f) Lt. Dunn asked the unidentified male if he was a barber and the male replied he was not, and pointed at his children. Lt. Dunn asked the father for his identification because he did not want the father to be able to

Upon arresting \$87(2)(b) Det. Mahoney stated he asked the other barbers if \$87(2)(b) was an employee, but no one gave him an answer [BR 20]. After Det. Mahoney could not find any identification for \$87(2)(b) Det. Mahoney \$87(2)(e)

concluded their investigation and were ready to leave the barbershop, Lt. Dunn returned the

in any way. When officers

walk away in case he was involved in §87(2)(e), §87(2)(f)

identification to the father without running a name search.

The officers held no suspicion that others in the barbershop were involved. Det. Mahoney explained that the officers had moved the barbers to the back of the room only because they work with razor blades, scissors, and other sharp objects which led the officers to fear for their safety. Although no employee expressed any physical aggression towards the officers, Det. Mahoney felt the barbers were being 'physically confrontational' because the officers had asked them questions and they were not replying. Det. Mahoney asked the barbers four to five times to move to the back of the shop but the barbers did not move or say anything to the officers. Det. Mahoney felt the barbers were more compliant when they eventually moved to the back of the store. Det. Mahoney did not ask the barbers for their identification, but remember another officer did ask them for it. Det. Mahoney stated that although the barbers were free to leave during the incident, none left.

PO Kuhl and Det. Wolvers recalled there were two civilians involved § 87(2)(9). § 87(2)(9). [BR 22; BR 21]. PO Kuhl explained that the barbers were instructed to stand at the rear of the barbershop so the officers could conduct a business inspection. PO Kuhl believed this was a decision Lt. Dunn made. Although it was not a hostile situation, the barbers all had sharp objects in their immediate lunge-able area which led the officers to feel unsafe. However, that fear was alleviated once the barbers moved away from their workstations to the rear of the store. PO Kuhl explained that until the officers finished their investigation, the employees were not free to leave. To conduct a business inspection, officers would have obtained all the identifications of the employees, to match with their barber licenses, and inspected all the workstations, containers, cabinets, towels, and tools. However, PO Kuhl stated the officers did not follow through with the business inspection. Det. Wolvers' statement was generally consistent with PO Kuhl's. Det. Wolvers did not ask if §87(2)(b) employee, did not hear another officer ask if \$87(2)(b) was an employee, and believed there was an employee. Det. Wolvers noted the civilians was a reason to determine if § 87(2)(b) were not free to leave during the incident as they were under investigation.

Surveillance footage from Camera 2 and Camera 3 beginning at 5:31:09 p.m. shows Lt. Dunn entering the barbershop first, followed by Det. Wolvers, PO Kuhl, and Det. Mahoney. Lt. Dunn immediately walks towards the rear of the store where \$87(2)(6) is standing and grabs \$87(2)(6) is arm to handcuff him. At 5:31:44 p.m., Det. Mahoney gestures with his right hand for people in the barbershop to move to the rear of the barbershop. At 5:31:55 p.m., \$87(2)(6) is the first barber to walk to the rear of the





201602798 - Camera 3.mp4

store. PO Kuhl walks to the front of the store and gestures at employees to go to the rear of the barbershop. At 5:32:16 p.m., all the barbers gather at the rear of the store. By 5:32:22 p.m., the unidentified male's children already exited the store and he grabbed their coats to bring outside with him. Lt. Dunn stops the father to speak with him, and the father removes his wallet from his back pocket to provide Lt. Dunn with his identification. Lt. Dunn takes the card and allows the father to exit the store. The officers were ordered by Lt. Hyland to leave the barbershop at 5:39:55 p.m. Lt. Dunn hands the father back his identification as he exits the barbershop and the father is reentering it. The incident is nine minutes long.

According to People v. Debour, 40 N.Y.2d 210 (1976), officers are warranted in interacting with an individual to the extent necessary to gain explanatory information, also known as common-law inquiry, whenever there is founded suspicion that criminal activity is occurring [BR 31]. With founded suspicion, officers can ask pointed questions that would reasonably lead individuals to believe they are suspected of a crime, and that the questions asked can be more extended and accusatory in order to focus upon possible criminality. Furthermore, Debour held that officers can forcibly stop and detain an individual whenever they has a reasonable suspicion that the individual has committed, is committing, or is about to commit a crime. Despite presence at a drug-prone location and the officers' training in narcotics, if the officer cannot see what is passed between the individuals supposedly making an exchange, do not see an exchange of currency, and cannot describe any other furtive conduct, they do not have reasonable suspicion to stop the individuals in question, and instead only possess a founded suspicion that criminal activity is afoot. People v. Loper, 2014 N.Y. App. Div. LEXIS 1735 (2014) [BR 32].

| § 87(2)(g) | | | |
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- Allegation B: Discourtesy Det. Daniel Mahoney spoke discourteously to 887(2)(b)
 - and 8.87(2)(b)
- Allegation G: Abuse of Authority Det. Daniel Mahoney threatened to close statement to state and statement to statement to state and statement to state and statement to statement to state and statement to statement to state and statement to statement to state and statement to statement to state and statement to state and statement to statement to state and statement to statement to

| Of the barbers in the barbershop, ones who understand English are \$87(2)(b) and \$87(2)(b) alleged Det. Mahoney yelled out, "All you motherfuckers get in the corner now" [BR 09]. \$87(2)(b) alleged Det. Mahoney said, "I want everyone to stop working right now. What the fuck did I say? Stop working right now" [BR 10]. \$87(2)(b) heard Det. Mahoney say, "Everyone get the fuck up out of here to the back" [BR 08]. |
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| In addition, \$87(2)(b) alleged when he asked officers why they were searching his store and stated that they needed a search warrant to search his barbershop, Det. Mahoney replied, "You really want me to get a warrant and shut your fucking place down?" \$87(2)(b) heard Det. Mahoney say to \$87(2)(b) "You guys got the fucking drugs and guns in here," and that he would get a business warrant to shut down the barbershop. \$87(2)(b) heard Det. Mahoney say to \$87(2)(b) "Shut the fuck up before I get papers to close this shit down." |
| Furthermore, when the barbers were gathered at the rear of the store, \$87(2)(b) heard Det. Mahoney say to \$87(2)(b) "Yo motherfucker, stand up." \$87(2)(b) had to interject and tell Det. Mahoney that \$87(2)(b) does not understand English, and told \$87(2)(b) in Spanish to stand up for the officer. |
| who claims to have a limited understanding of English, heard Det. Mahoney tell all the barbers gathered at the rear of the shop to, "Shut the fuck up" [BR 14]. [887(2)(b)] and [887(2)(b)] did not understand the words Det. Mahoney said to them, but only understood the gist of the matter [BR 11; BR 13; BR 12]. |
| Det. Mahoney stated he asked the barbers four to five times for them to move to the back of the shop but the barbers did not move or say anything to the officers [BR 20]. Det. Mahoney could not distinguish if there was a language barrier between the officers and the barbers. No civilian indicated to Det. Mahoney that they did not understand English. Det. Mahoney stated he would never call anyone a 'motherfucker,' but did not remember if he had used the word 'fuck' in any context towards civilians in the barbershop. Det. Mahoney did not know for sure if he used any profanity throughout the incident. Det. Mahoney did not remember making any threats to close down the barbershop and did not believe he asked, "You really want me to get a warrant and shut the fucking place down?" or state, "Shut the fuck up before I get papers to close this shit down." Det. Mahoney did not believe he told any civilian, "Yo motherfucker, stand up," and stated he tries not to talk like that in front of civilians. |
| Lt. Dunn, Det. Memedoski, and Det. Martinez denied hearing another officer speak profanely in the barbershop or make any threats to close the barbershop [BR 18; BR 19; BR 23]. PO Kuhl and Det. Wolvers did not remember if another officer spoke profanely or if a threat was made to close the barbershop [BR 22; BR 21]. |
| An officer must be courteous and respectful when in contact with the public. NYPD Patrol Guide, Section 203-09(2) [BR 25]. |
| § 87(2)(g) |
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- Allegation C: Abuse of Authority –PO Matthew Kuhl searched [887(2)(b)] in the Bronx.
- Allegation E: Abuse of Authority PO Matthew Kuhl searched §87(2)(6)
- Allegation F: Abuse of Authority Lt. Michael Dunn searched §87(2)(b) in the Bronx.
- Allegation I: Abuse of Authority Det. Daniel Mahoney searched in the Bronx.
- Allegation J: Abuse of Authority Det. Jerry Wolvers searched [\$87(2)(b)] in the Bronx.
- Allegation K: Abuse of Authority Det. Jerry Wolvers searched § 87(2)(b)

Civilian testimonies provided by \$87(2)(b) [BR 09], \$87(2)(b) [BR 10], \$87(2)(b) [BR 10], \$87(2)(b) [BR 10], \$87(2)(b) [BR 13], \$87(2)(b) [BR 13], and \$87(2)(b) [BR 14] were generally consistent in that PO Kuhl, Lt. Dunn, Det. Mahoney, and Det. Wolvers searched the drawers of the workstations. They were also consistent in that PO Kuhl and Det. Wolvers searched \$87(2)(b) s jacket and the contents of his personal bag which were hanging next to the last workstation on the right side of the barbershop.

Det. Mahoney stated he was focused on finding identification for \$87(2)(b) when he was searching the drawers of the workstation [BR 20]. Det. Mahoney did not remember if \$87(2)(b) had identification on his person when he searched \$87(2)(b)

Det. Wolvers stated he searched the 'lunge-able, grab-able, and dump-able' areas of the workstation that were within reach of \$87(2)(b) to ensure \$87(2)(b) did not hide any narcotics [BR 21]. Det. Wolvers confirmed he searched the drawers of the workstation and a personal bag on the workstation.

After \$87(2)(b) did not answer Lt. Dunn's questions on whether if he was a barber and if the personal items at the workstation were his, Lt. Dunn stated he opened the personal bag lying on the workstation to look for identification [BR 18]. Lt. Dunn saw only clothes inside and no wallet. Lt. Dunn also opened the drawers of the workstation to look for identification but found nothing out of the ordinary for a barbershop.

PO Kuhl confirmed he searched the workstation and the jacket and bag at the workstation as a part of the officers' intent to conduct a business inspection [BR 22]. PO Kuhl noted the bag had a nametag which matched the barber's license hanging on the wall, and noted the name was not serious.

Surveillance footage from Camera 2 and Camera 3 beginning at 5:32:10 p.m., PO Kuhl begins searching the drawer closest to him (in the last workstation). At 5:33:48 p.m., PO Kuhl turns to face the wall and feels the jacket hanging up on the wall. He then opens the left drawer in the second to last workstation and rifles through its contents. Lt. Dunn opens the drawer on the right and searches it. At 5:36: p.m., Det. Mahoney opens the drawer on the left of the last



201602798 - Camera 2.mp4

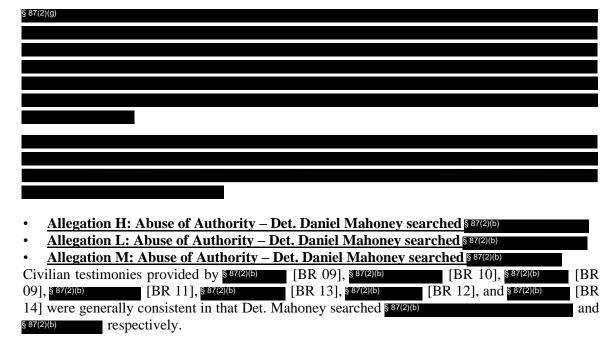


201602798 - Camera 3.mp4

workstation and rifles through it. Det. Wolvers picks up a haircut cape from the last chair and shakes it out. Det. Wolvers then sifts through the items on the top of the last workstation while Det. Mahoney opens the drawer on the right of the last workstation and closes it. At 6:36:50 p.m., Det. Wolvers searches through the clothing hanging next to the workstation.

<u>Marshall v. Barlow</u> 436 U.S. 307 (1978) [BR 27] established that warrantless searches are generally unreasonable, and that this rule applies to places of business as well as residence. The search of a private house is presumptively unreasonable if conducted without a warrant; the businessman, like the occupant of a residence, has a constitutional right to go about his business

free from unreasonable official entries upon his private commercial property. The Fourth Amendment applies to searches undertaken for regulatory purposes as well as to searches for criminal evidence, although warrants for searches in the former category need not be supported by probable cause in the traditional sense since they are neither personal in nature nor aimed at the discovery of evidence of crime. People v. Scott, 79 N.Y.2d 474 (1992) [BR 26]. As reiterated in New York v. Burger 482 U.S. 691, 107 S. Ct. 2636, 96 L. Ed. 2d 601 (1987) [BR 34], the Fourth Amendment established that a person's reasonable expectation of privacy in his or her home or business exists not only with respect to traditional police searches conducted for the gathering of criminal evidence but also with respect to administrative searches designed to enforce regulatory statutes. In People v. Greenleaf 222 A.D.2d 838 (1995) [BR 30], the court utilizes a three-part test in regards to entering without a warrant onto private property in emergency situations: (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; (2) The search must not be primarily motivated by intent to arrest and seize evidence; (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.



Det. Mahoney explained that he asked the barbers four to five times to move to the back of the shop, but the barbers did not move or say anything in response [BR 20]. Det. Mahoney felt the barbers were being 'confrontational' by their lack of cooperation. Once the barbers moved to the back of the store as they were asked to, Det. Mahoney felt the barbers were still being confrontational and wanted to make sure they did not have anything on them that would hurt him or other officers. At the time the barbers stepped to the back, Det. Mahoney recalled he had been standing at the last workstation on the right. While searching the workstation, he feared for his safety; Det. Mahoney could not estimate how far the workstation was from where the barbers stood at the rear of the barbershop. Det. Mahoney did not remember if he had been directed by a supervisor to search the barbers or if he conducted the searches on his own. Det. Mahoney frisked and searched between one and five barbers; he did not remember if any barbers showed any aggression to being searched. Det. Mahoney checked each individual's pockets, around the waistband, and their socks. Det. Mahoney removed any items he felt in their pockets to see what

the item was. Det. Mahoney did not recover any weapons. Det. Mahoney did not ask the individuals he searched for their identification.

Lt. Dunn stated he did not observe anyone in the store being frisked or searched, nor did he direct any officer to frisk or search any individuals [BR 18]. Det. Wolvers, PO Kuhl and Det. Martinez stated they had no knowledge if anyone had been frisked or searched [BR 21; BR 22; BR 23].

Surveillance footage from Camera 2 and Camera 3 beginning at

| 5:35:25 p.m., SHOWS Det. Mahoney removing items from strong items |
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| <u>Debour</u> established that in order to frisk an individual, an officer must have reasonable suspicion that he is in danger by virtue of the individual being armed [BR 31]. In order to search a person, an officer must have probable cause to believe that the person has committed a crime. |
| § 87(2)(g) |
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| § 87(4-b) § 87(2)(g) |
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| • § 87(4-b) § 87(2)(g) |
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| quad: <u>6</u> | | | |
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| vestigator: | Rebecca Ho | 06/13/16 | |
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